



# **Policy on the appointment and remuneration of directors of council organisations**

A policy on the appointment and remuneration of  
directors

Date adopted by Council:

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## 1. Purpose

The purpose of this policy is to set out, in accordance with section 57(1) of the Local Government Act 2002 (the Act), an objective and transparent process for:

- The identification and consideration of the skills, knowledge and experience required of directors of council organisations;
- The appointment of directors to council organisations; and
- The remuneration of directors to council organisations.

## 2. Background

### 2.1 Relevant legislation and references

This policy has been determined with reference to:

- The Local Government Act (2002):
  - Section 6: Meaning of council controlled organisation and council organisation
  - Section 57: Appointment of directors
  - Section 275: First policy on appointment of directors
- Auditor-General’s Guidelines as set out in “Governance and accountability of council-controlled organisations” dated September 2015
- New Zealand Institute of Directors Manual

### 2.2 Definitions

Refer to section 6 of the Act for full definitions of the following terms but, in summary:

**Council organisation (CO)** is an organisation where the Council controls one or more of the votes *or* has the right to appoint one or more of the directors, trustees or managers.

The Act also creates two sub-categories of COs:

A **council-controlled organisation (CCO)** is a CO in which one or more local authorities control 50% or more of the votes or have the right to appoint 50% or more of the directors.

A **council-controlled trading organisation (CCTO)** is a CCO that operates a trading undertaking for the purpose of making a profit.

**Director** includes trustees, managers, or office holders of a council organisation (however described).

## 2.3 Principles

In all cases the appointment and remuneration processes for directors of CCOs will:

- be objective and transparent, while protecting individual privacy;
- manage conflicts of interest appropriately;<sup>1</sup>
- take into account the context in which the Council, as a publicly accountable body, must operate; and
- be made on the basis of skills, knowledge and experience, having regard to the nature and scope of the council organisation activities and the organisation's overall objectives.

## 2.4 Application of this policy

This policy set out a **generic process** for the appointment to and remuneration of boards of CCOs. In addition to this policy, appointments and reappointments to the boards of CCOs are governed by their respective regulations (constitutions, trust deeds and, if enacted, legislation). Where ownership of a CCO is jointly or severally shared with other entities, governance requirements are established through shareholder agreements or equivalent documentation. CCOs that are companies are also subject to the Companies Act 1993.

In the event of a conflict between this policy and those regulations, the regulations take precedence over this policy.

Appendix A provides further background and guidance on this policy as it applies to the following CCOs:

- Wellington Regional Economic Development Agency Ltd (WREDA);
- Wellington Water Ltd (WW);
- WRC Holdings Group of Companies;
- CentrePort Ltd;
- Wellington Regional Stadium Trust;<sup>2</sup> and
- Local Government Funding Agency (LFGA).

<sup>1</sup> Refer to the Auditor-General's *Guidance for members of local authorities about the law on conflicts of interest: June 2007*.

<sup>2</sup> While the Wellington Regional Stadium Trust is not a CCO this policy applies to appointments to the Trust's board. CIR v Wellington Regional Stadium Trust 6/9/05, CA164/04 provides that the provisions of the Wellington Regional Council (Stadium Empowering) Act 1996 are a self-containing statutory code.

### 3. Director appointments

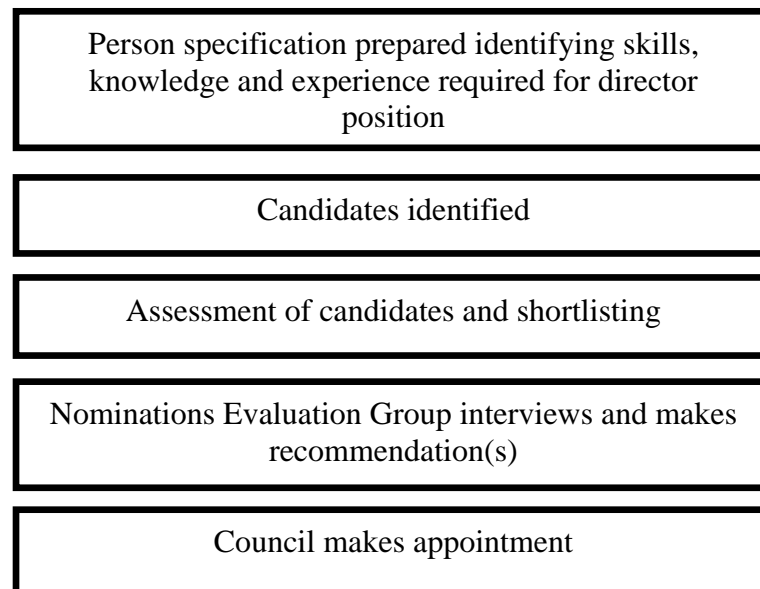
In all cases the Council will appoint a person who the Council considers shows the following:

- The skills, knowledge and experience needed to undertake the relevant role.
- Sound judgement.
- A high standard of personal integrity.
- An ability to devote time and attention to the entity.
- An understanding of governance requirements for the type of organisation concerned.

Consideration will also be given to the broader business interests of potential directors to ensure any conflicts of interest are declared and appropriately managed.

### 4. Outline of generic process

Subject to any applicable regulations, the below generic process will be followed in appointing directors to CCOs.



#### 4.1 Preparation of person specification

When a vacancy arises a person specification will be prepared setting out the skills, knowledge and experience required of a director. In preparing this person specification consideration will be given to the following:

- the nature and scope and activities of the CCO, its future direction and requirements in its constitutional documents;
- the objectives of the organisation and the attributes, skills, knowledge and experience required to contribute to the achievement of those objectives;
- previous experience as a director, an understanding of governance requirements for the type of organisation, including leadership and strategic thought
- ability to devote time and attention to the role
- business experience and knowledge as required by the role.

The overall mix on a board will be taken into consideration when developing a list of desired skills for a specific position and will take into account complementary skills, ethnicity, gender and diversity the incumbent could bring to the board, thus ensuring there is a balance of skills, knowledge and experience among directors for the board to work effectively.

#### **4.2 Identification of eligible candidates**

The appropriate avenue for identifying candidates for a CCO will be determined in the first instance, with reference to any applicable regulations. In general, applicants may be sought by way of one or more of the following methods:

- public advertisement;
- a search of potential candidates by a recruitment agency;
- approaching government agencies (e.g. New Zealand Transport Agency, Ministry of Women's Affairs, The New Zealand Office of Ethnic Affairs, Ministry of Pacific Island Affairs, Te Puni Kokiri, Ministry of Consumer Affairs, Office for Disabilities Issues) for nominations from their candidate databases;
- a search through the Institute of Directors' Director Search database public advertisement; and
- Councillor or officer referrals.

The requirement to undertake a search for eligible candidates will not be necessary in the following circumstances

- The Council is considering an appointment to a CCO where potential applicants for the position are limited to elected members only.
- The Council has an existing pool of potential candidates. There may be cases where, because of a recent appointment process the Council has a number of potential

applicants for a position who have already submitted their applications and have agreed their details could be used for consideration of future appointments. In such cases, the panel may elect not to undertake a further search for applicants and may recommend to the Council a potential appointee. When the panel elects to appoint a person from an existing pool of appointees it must set out in its report to the Council the reason why a further search was not considered necessary.

### *Eligible candidates*

Elected members and appropriately qualified external applicants may be eligible for appointment to CCO boards. The appropriate mix between independent directors and elected-members will be determined with reference to regulations governing the composition of a particular CCOs board. In general, preference will be given to ensuring CCO boards include independent directors as consistent with Auditor General Guidelines.<sup>3</sup>

Employees are not eligible to be considered as candidates for director positions to CCO boards unless they are appointed in their capacity as an employee of GWRC.

## **4.3 Assessment of candidates (consideration of skills, knowledge and experience)**

Applications and nominated candidates will be assessed and shortlisted for consideration by a Nominations Evaluation Group. The Nominations Evaluation Group is responsible for interviewing shortlisted candidates and preparing a report for the Council, outlining its recommendations. The Nominations Evaluation Group does not need to make a recommendation identifying a preferred candidate.

The composition of the Nominations Evaluation Group will be determined on a case by case basis with reference to the relevant CCO. In general, the Nominations Evaluation Group may comprise of:

- elected member(s)
- senior officer(s) of GWRC, and
- external people (if considered appropriate)

### *Conflicts of interest*

Any/all relevant interests should be declared during the assessment stage, so that the potential for a conflict of interest can be assessed in advance of an appointment being made. Further guidance on the management of interests and conflicts can be found on the Office of the Auditor-General web site: *Managing conflicts of interest: Guidance for public entities*, refer [www.oag.govt.nz/2007/conflicts-public-entities/](http://www.oag.govt.nz/2007/conflicts-public-entities/)

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<sup>3</sup> Refer to the Auditor-General's *Guidance Governance and accountability of council-controlled organisations: September 2015*

#### 4.4 Council decision and appointment

The decision as to the appointment will be made at a full Council meeting. Reports recommending appointments and the Council's final decision will be considered in a publicly excluded portion of a Council meeting to protect candidate privacy.<sup>4</sup>

A public announcement of the appointment will be made as soon as practicable after council has made its decision and received confirmation of acceptance from the candidate.

Note: If an elected member is under consideration to fill a particular vacancy, that elected member cannot take part in the discussion or vote on any other proposed appointees being considered for the same board at the same meeting.

#### 4.5 Term of appointment and reappointment

All appointments will specify the intended term of the appointment. Board members normally serve a maximum of two 3-year terms, with the option of further reappointment if there is good reason.

Upon expiry of the term of the appointment the Director shall retire from the council organisation and, subject to the board members' performance and skills continuing to be relevant to the board may be eligible for reappointment.

A director who is retiring from their first term, deemed eligible for reappointment and who wishes to stand, may, at the sole discretion of the Council, be reappointed for a further term.

Regular director rotation is encouraged, but terms in aggregate exceeding 6 years will be considered on a case-by-case basis. The Council recognises that directors often have a valuable institutional knowledge that organisations need to retain.

##### *Termination of appointments*

A director's appointment will be terminated in accordance with relevant regulations applying to the CCO. Where termination of appointments is not specified in a CCO's regulations, the Council will have the ability to terminate the director, at any time by way of written notice. There will be no compensation payable to directors for early termination.

### 5. Remuneration and indemnification of Directors

The remuneration of directors of CCOs will be determined by the nature of the business of the organisation and the financial situation of the organisation.

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<sup>4</sup> Section 48 of the Local Government Official Information and Meetings Act 1987 (LGOIMA) states that the public may be excluded from the whole or any part of a meeting when, amongst other things, "the public conduct of the whole or the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist". LGOIMA states that good reason will exist when it is necessary to protect the privacy of natural persons.



Where the Council is the sole shareholder in a particular organisation the Council will set the directors remuneration either by resolution at the annual general meeting or resolution of the Council.

Remuneration and fees will be paid out directly to individual directors, even where a director has a fiduciary duty to pass on these fees to an employer.

## **5.1 Entitlement to receive director fees**

### *Elected members*

Elected members who are also directors of CCOs are not entitled to director fees unless the Council specifically resolves otherwise. However, they are entitled to receive travelling expenses (mileage and parking) based on the rates applicable to members of Council.

### *External directors*

Directors of CCOs who are not elected members of Council will receive directors' fees and expenses as approved by the Council from time to time.

Periodically, normally every three years, the Council will review the level of remuneration for directors of council-controlled organisations. In performing its review the Council will, normally on the basis of external advice, take account of:

- The need to attract and retain appropriately qualified directors
- The nature of activities undertaken by each of the CCOs
- The extent of input expected from non-elected directors
- The synergy achieved from effectively running the CCOs closely together.

## **5.2 Indemnity**

The Council supports the payment by CCOs of directors' liability insurance and the indemnification of directors.

## **6. Appendix A: Guidance for specific GWRC CCOs**

### **6.1 Wellington Regional Economic Development Agency Ltd (WREDA)**

WREDA is a CCO, a not-for-profit company and the regional economic development agency for the lower North Island. It combines the economic development activities of Wellington City Council (WCC) and Greater Wellington Regional Council (GWRC) to advance the prosperity and liveability of the Wellington region. It is 80% owned by WCC and 20% owned by GWRC.

#### *Appointment and remuneration of directors*

The recommended appointment, removal and remuneration of directors to the WREDA is determined by the Wellington Regional Strategy (WRS) a committee composed of representatives from Councils within the Greater Wellington region.

The WRS provides its recommendations to the two shareholders WCC and GWRC for decision on appointment, removal and remuneration of the Directors of WREDA.

The agreement between the shareholders provides that all directors appointed to the board must be independent directors, and that an annual review of performance of the board is to be undertaken and reported to the Chair of the WRS and the Shareholder Chief Executives.

### **6.2 Wellington Water Ltd (WW)**

WW is a CCO, and manages the treatment and supply of water, storm water, and wastewater service delivery in the Wellington region.

The CCO is owned equally (20% each) by the five Wellington domiciled Councils.

The WW Board is accountable to the Wellington Water Committee (WWC) – a standing committee of elected representatives from each of the shareholding Councils.

#### *Appointment and remuneration of directors*

The WWC is responsible for the appointment, removal and remuneration of the Directors of WW.

### 6.3 WRC Holdings Group of Companies

WRC Holdings Limited (WRCH) is a CCTO and holding company for the Council's trading activities and rail assets. These include Port Investments Limited and Greater Wellington Rail limited. All the companies have the same set of directors.

### 6.4 Board membership – independent and elected membership

The Constitution allows for between four and seven directors. Council can determine the mix between independent directors and Councillors. However, the constitution allows for a minimum of two Council representatives.

This board composition has the following advantages:

- independent appointments provide an external overview and brings in key business skills; and
- having a common board of directors for the companies within the group promotes efficiency as all meet at the same time and there are linkages between them.
- having a balance between independent directors and Councillors on the board of WRC Holdings Ltd provides both diversity along with council knowledge and expertise. Council control is exercised through the company's Constitution and Statement of Intent over the holding company and its assets, for which the directors are accountable.

#### *Appointment of a chairperson*

The Chair is to be elected by Council and this person can be either an independent director or a Councillor, best practice indicates an independent chair is the preferred option.

#### *Candidate assessment – Nomination Evaluation Group*

The Nominations Evaluation Group, responsible for assessing shortlisted director candidates for WRCH, comprises of:

- the Council Chairperson,
- the Council Deputy Chairperson
- the Chair of WRC Holdings Group
- the Chief Executive, and
- the Chief Financial Officer (Principal co-ordinator).

### *Tenure and reappointment*

The appointment of an independent director shall be for a three year term. At the conclusion of the three year term, each external director by rotation may offer themselves for reappointment.

Where a non-elected member seeks or is proposed for reappointment as a director of a CCTO, the Chairperson of the CCTO board will provide a confidential report to the shareholders outlining such matters as:

- Whether the skills of the incumbent add value to the board;
- Whether there are other skills the board needs;
- Succession issues; and
- the overall contribution the individual has made to the board.

Regular director rotation is encouraged, but terms in aggregate exceeding 6 years will be considered on a case-by-case basis. The Council recognises that directors often have a valuable institutional knowledge that organisations need to retain.

## **6.5 CentrePort Ltd**

CentrePort Ltd (CPL) is not a CCTO<sup>5</sup>, the policies covering the appointment and remuneration of directors are set out in the Constitution of CPL.

CentrePort Ltd operates much in the same way as a CCTO with a non-executive board of directors.

The Shareholder of CPL is – Port Investments limited and is the body responsible for determining the level of remuneration of CPL directors.

It should be noted that CentrePort has the power to appoint Board members provided that the number of directors is within the confines of the Constitution.

### *Remuneration of directors*

Each year at the Annual General Meeting the shareholders approve the level of remuneration for the directors of CentrePort Ltd.

Where necessary, Port Investments will seek external advice in relation to exercising a judgement about the appropriateness of the remuneration being sought.

The remuneration is reviewed in the context of industry and other commercial practice and trends.

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<sup>5</sup> Centreport Ltd is exempted from the definition of a CCTO through the exclusion of port companies under section 6(4) of the Local Government Act 2002

## 6.6 Wellington Regional Stadium Trust

Wellington Regional Stadium Trust (Trust) is not a CCO as the provisions of the Wellington Regional Council (Stadium Empowering) Act 1996 are a self-containing statutory code.<sup>6</sup> However, in terms of a process for appointments it is treated as a CCO to include it within this policy framework.

The Council jointly appoints trustees with the Wellington City Council pursuant to the Trust Deed. To qualify, a trustee must be a resident of the Wellington Region.

### *Identification of required skills, knowledge and experience of trustees*

The mix of skills and experience on the Trust Board is reviewed at least annually and consideration given to complementing and reinforcing existing skills and reducing known weaknesses where necessary.

The required skills, knowledge and experience of trustees appointed to the Trust are assessed in the first instance by the Trust Chairperson in conjunction with the two settlors (WCC/WRC).

The following qualities are sought in the trustees of the Trust:

- The skills, knowledge and experience needed to undertake the relevant role
- Sound judgement
- A high standard of personal integrity
- An ability to devote time and attention to the entity
- An understanding of governance requirements for the trust. leadership and strategic thought;
- entrepreneurial flair; and
- *understanding* the wider interests of the two settlor Councils.

Of the trustees appointed to the Trust Board at any one time, the two settlors can appoint one councillor from each Council to help ensure the interests of the two settlors are protected and to assist communication between the Trust and the settlors.

Recommendations for appointment of trustees are made to each Council prior to any appointment being made.

Each year existing trustees routinely retire by rotation and offer themselves for re-appointment.

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<sup>6</sup> *CIR v Wellington Regional Stadium Trust* 6/9/05, CA164/04.

### *Remuneration of trustees*

Each triennium the scale of payments to trustees is reviewed by the two settlors. Where necessary the Council will seek external advice on this matter in conjunction with Wellington City Council.

All trustees (including councillors) are subject to the same payment basis with the exception of the Trust Chair who receives proportionately more, consistent with the role.

## **6.7 Local Government Funding Agency (LGFA)**

The LGFA was set up to provide a cost effective source of finance for the Local Government sector.

Council has a small shareholding in the LGFA and is represented by a Council elected Shareholders Council (SHC).

The SHC monitors the LGFA performance through its Statement of Intent and Councils may seek representation on this body on an annual basis.

The SHC makes recommendations to the individual shareholder Councils on the appointment and removal of directors and level of director's remuneration in consultation with the LGFA Board Chair.

Council is entitled to vote at the Annual general meeting of the LGFA on the above matters.